

**To: Members of the Assembly Transportation Committee
July 19, 2007**

From: Wisconsin Wetlands Association-- Becky Abel, Executive Director

RE: Assembly Bill 259. Relating to DOT acquisition of land for mitigation related to highway projects.

The Wisconsin Wetlands Association, a statewide member-based nonprofit organization, has as its mission the protection, restoration and enjoyment of wetlands and their associated ecosystems through science-based programs, education and advocacy. Our 1500+ members include hunters, anglers, wetland professionals and academics, paddlers, bird-watchers, outdoor enthusiasts and educators.

Wisconsin Wetlands Association opposes AB259 for the following reasons:

- Transportation projects are the single largest source of wetland destruction in the state (annually DOT fills about the same # of acres as all other sources of private fill combined). DOT already has a hard time locating willing sellers and appropriate sites to meet wetland mitigation obligations. This would further constrain their efforts.
- The state of Wisconsin's wetland strategy is "Reversing the Loss" (see NR 1.95). We should not support legislation geared towards constraining wetland restoration efforts, particularly those required through federal regulation to offset wetland losses due to state-funded public transportation projects.
- The bill is bad public policy and interferes with private property rights. Local governments should not have the authority to regulate who a private landowner chooses to sell his/her land to for what purposes.
- If a landowner wants to convert a portion of his land to wetlands (via sale to DOT, through enrollment with a government program or voluntarily), this decision should not be subject to public approval.

Wetlands are critical community assets that provide natural flood insurance, clean water filtration services, wildlife habitat for fish and game species, and recreational and tourism opportunities. In most cases, the lands that this bill would impact are agricultural lands that were previously converted wetlands and are not the most suitable lands for development anyway. This bill has the potential to unnecessarily complicate the DOT process for finding suitable mitigation sites.

Wisconsin Department of Transportation Testimony

Re: 2007 AB 259

July 19, 2007

Good morning, my name is Dan Scudder, and I'm here today representing the Wisconsin Department of Transportation. I am testifying in opposition to Assembly Bill 259.

The Wisconsin Department of Transportation is required by Federal and State laws and rules to mitigate wetland impacts resulting from our transportation projects. The mitigation agreements must be completed before the project can proceed to construction. AB 259 proposes to allow a city or village to stop the sale of privately owned land from a willing seller to the Wisconsin Department of Transportation if that land lies within the borders of the city or village, is more than ¼ mile from the transportation project, and will be used for wetland mitigation.

While it's not possible to quantify the fiscal impact of this proposal to the Department, in the few instances when it applies to our transportation projects it is likely increase our time and project costs associated with wetland mitigation, and possibly the Department's long-term maintenance costs. The Department puts substantial effort into identifying potential mitigation properties that offer reasonable development and maintenance costs, while maximizing the potential for success and the amount of wetland credits we receive. Rules and guidance mandate that mitigation sites for wetland loss be first sought on or near the project site. Since we do not condemn property needed for mitigation purposes, when we find a suitable property we enter into negotiations with the property owner, if he/she is interested. Only after negotiations are completed and agreement with the property owner is reached can DOT conclude the mitigation plan and proceed to the construction phase of the project. Adding the step of city

or village approval, after negotiations between DOT and the property owner, will add uncertainty to the process and an additional time delay for both DOT and the property owner. In those cases when DOT may be prevented from purchasing property after successful negotiations, both DOT's time and the property owner's time will have been wasted, not to mention any legal expenses incurred by either party.

In summary, when DOT identifies a property it desires for mitigation purposes it is because it offers us a good, cost-effective, combination of lower development and maintenance costs while maximizing the potential for success and desired wetland conversion credits. If, for whatever reason, DOT cannot purchase its first choice(s) we will continue looking until we can find and purchase properties that satisfy the transportation project's mitigation obligations. However, time delays related to additional searches and property negotiations can impact construction let schedules, and purchasing less suitable mitigation properties can impact both project and long-term maintenance costs.

Thank you for ^{your} time and attention, and the opportunity to testify this morning.

Testimony of Wisconsin Department of Natural Resources
2007 AB 259
July 19, 2007

Good morning. My name is David Siebert and I am testifying on behalf of Secretary Hassett regarding AB 259. The Department of Natural Resources wishes to register our opposition to the bill.

Through an interagency cooperative agreement, DNR works closely with DOT on each new transportation project to mutually assure that both of our agency missions are considered in the final project plans. This formal agreement has been in place since 1976, with special amendments to the agreement occurring over time.

One such amendment was included in 1991 and is related to how the agencies work together to meet state and federal requirements for wetland protection. That process includes a mitigation sequence of avoidance, minimization and compensation for wetland impacts.

DNR has also worked closely with DOT to implement federal guidelines for wetland compensatory mitigation. These guidelines outline the process that the state and federal agencies follow to plan, design, construct and monitor wetland mitigation projects.

DNR works closely with DOT in the initial site investigation and selection processes with a mutual goal of finding the best sites for high quality wetland restoration. We recognize the difficulties involved in finding suitable sites for wetland restoration. DOT has additional constraints due to its requirements for seeking willing sellers for its mitigation projects.

We concur with the testimony of DOT that the proposed bill will add another layer to the process that could further constrain its ability to secure quality sites to meet federal permit requirements. We further concur that the bill could cause delays in the construction schedules for transportation projects. Without a completed mitigation plan, the projects cannot move forward to construction. In addition, the bill may add to the costs of some transportation projects if the mitigation plan is delayed and new sites must be secured.

Thank you for considering our comments.